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In the

Supreme Court of the United States

No. 552

UNITED STATES OF AMERICA,
Respondent

v.

CAROL LEE RAGLAND AND
ARTHUR ELWOOD WILLIAMS,
Petitioners

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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CAROL LEE RAGLAND AND
ARTHUR ELWOOD WILLIAMS,
Petitioners

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

The defendants, Carol Lee Ragland and Arthur Elwood Williams, pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit.

OPINION BELOW

On January 5, 1962, pursuant to a jury's verdict of "guilty" a judgment of conviction was entered in the United States District Court for the District of Maryland adjudging the defendants guilty of conspiracy to possess sugar intended to be used in the production of distilled spirits (18 U. S. C. A. 371; 26 U. S. C. A. 5686(a)), and of the substantive offense of unlawfully possessing sugar intended

for use in violating the Internal Revenue Laws. Prison sentences were imposed upon the defendants. From this judgment of conviction, the petitioners appeal to the United States Court of Appeals for the Fourth Circuit. The opinion and judgment of the United States Court of Appeals for the Fourth Circuit, was entered on August 21, 1962, upholding the decision of the United States District Court for the District of Maryland.

JURISDICTION

The decision of the United States Court of Appeals for the Fourth Circuit, was entered on August 21, 1962. The statutory basis for attempting to invoke the jurisdiction of this court is Title 28, Section 1254 United States Code.

QUESTIONS PRESENTED

The questions presented are:

1. Whether or not the United States Court of Appeals for the Fourth Circuit correctly interpreted prior decisions of this court and;

2. Whether or not the decision of the United States Court of Appeals deprived the petitioners of a constitutional right and;

3. Whether or not there was sufficient evidence for the petitioners to have been convicted in the United States District Court, which conviction was upheld by the Court of Appeals.

REASONS FOR GRANTING THE WRIT

The judgment of the Court of Appeals upholding the judgment of the District Court is a unique and erroneous interpretation of the criminal law as applied by this court

and other Federal Courts. This decision, in effect, allows conviction of a defendant who:

1. Possesses sugar in large quantities, and

2. Takes advantage of his constitutional privilege, i.e., the privilege against self-incrimination.

Throughout its opinion the Court of Appeals placed considerable emphasis upon the failure of the defendants to explain the intended use of the sugar which the petitioners possessed. At page 11 of its opinion the Court of Appeals stated "it would seem that only Ragland and Williams, and possibly Leski, knew for what use the suspect sugar was intended and if the intended use was legitimate, it was peculiarly within their power to prove these facts, either by their testimony or that of others. Faced with the testimony of the Government, we are of the opinion that a situation was presented where the defendants remained silent at their peril. At page 8 of its opinion the Court of Appeals stated "it is noteworthy in this case that neither defendant testified nor offered any evidence at all to explain their possession of this large quantity of sugar". The theory the Court of Appeals seemed to be operating under was that once the prosecution has established a prima facie case then the defendant remains silent at his peril. The Court of Appeals cited *Wilson* v. *United States*, 162 U. S. 613; *Graves* v. *United States*, 150 U. S. 118; *Crawley* v. *United States*, 268 Fed. 2d 808 (4th Cir.); and *Holland* v. *United States*, 348 U. S. 121. In the *Wilson* case, the defendant was found to possess certain property which belonged to the decedent shortly after the decedent was murdered. In the *Graves* case, the defendant's wife did not appear at the trial of the defendant although she was present in the city wherein the trial took place. The prosecuting attorney commented on the failure of the defendant to produce his wife, she having

allegedly been with the defendant at a place other than where the murder was committed, at the time the murder was committed. In the *Holland* case, the defendants argued that the Government failed to negate all sources of non-taxable income. This Court, in partial response to the Hollands, cited the case of *Yee Hem* v. *United States*, 268 U. S. 178. In the *Yee Hem* case, the defendant was charged with possessing opium which had been unlawfully imported into the United States. The statute under which the defendant was convicted contained a provision making possession of opium sufficient evidence to convict absent an explanation of such possession satisfactory to the jury. In the *Crawley* case, the defendant was found to possess a large number of $100.00 bills which had theretofore been stolen during the course of a bank robbery. It is respectfully submitted that none of these cases support the theory of the Court of Appeals. In the *Wilson* case, the crime of murder was clearly established by evidence independent of Wilson's explanation of the possession of the decedent's property, or the lack of such explanation. The question of Wilson's connection with the crime of murder was the question dealing with his possessing the decedent's property. His failure to satisfactorily explain such possession helped to establish that he committed the crime, i.e., murder. Such failure of explanation was not used to establish one of the essential elements showing the crime to have been committed.

In the *Crawley* case, the crime of bank robbery was established by evidence independent of the failure of the defendant to explain his possession of the $100.00 bills and his sudden rise in affluence. The failure of explanation by Crawley was evidence of his connection with the crime. It was not evidence of the establishment of an essential element of the crime.

In the *Holland* case, unreported income was shown and

this court held that the showing of "likely source" was satisfactory to establish that the increase in net worth was attributable to unreported taxable income.

In the *Yee Hem* case the statute under which the defendant was prosecuted made the mere possession of opium a crime unless the defendant established that the opium was imported unlawfully. The opium, in effect, by the statute was made contraband.

In its decision the Circuit Court used the failure of the defendants to explain the possession of the sugar as evidence establishing one of the essential elements of the crime charged, i.e., the intended unlawful use. The Government had to prove two elements to establish the crime charged:

1. The possession of property (sugar) and,

2. Intent that such property be used to violate the Internal Revenue Laws.

Each element had to be proven beyond a reasonable doubt. Assuming that the Government proved possession, the failure of the defendants to prove an intended lawful use did not create a presumption that would satisfy the requirement that the Government prove an intended unlawful use. Such a rule as advocated in the Court of Appeals decision, would place sugar in the same category as opium. It would shift the burden of proof as to an essential element of the crime from the Government to the defendant. The rule in *Wilson, Graves, Crawley,* and other decisions of a like nature require proof of all elements of the crime until a prima facie showing has been made before shifting the burden of proof to the defendant. Here the Circuit Court shifted the burden to the defendant in order to establish a prima facie case. The failure of explanation by the petitioners was taken by the Circuit Court, as evidence to show that the petitioners intended their unlawful use, not to show that the defend-

ants committed a crime, the elements of which was established by evidence independent of the lack of explanation as was done in *Crawley, Graves, Wilson* and others.

The Court of Appeals, in its decision on August 21, 1962, either engaged in assuming evidence that was not introduced in the trial of the petitioners in the District Court, or took judicial notice of facts which cannot be proven by judicial notice. "The matters of which a court will take judicial notice must be a subject of common and general knowledge. In other words, judicial notice of facts is measured by general knowledge of the same facts. A fact is said to be generally recognized or known when its existence or operation is accepted by the public without qualification or contention". *Waters-Pierce Oil Co.* v. *Deselms*, 212 U. S. 159, 20 Am. Jur. 49.

In its opinion, the Court of Appeals, at page 7, stated "the evidence does not disclose the actual residence of either Ragland or Williams. However, both vehicles involved bore Virginia license plates and the truck was titled in the name of a resident of Hanover, Virginia, near Richmond. It would be strange indeed for residents of that vicinity to come all the way to Baltimore to purchase sugar". No evidence, as was stated by the court, of the defendants' residence was introduced. The mere fact of being in vehicles registered in Virginia does not permit the assumption that the occupants are Virginia residents. The Court of Appeals on page 7 of its decision indulged in the assumption, apparently by judicial notice that ownership or possession of an automobile equipped with overload springs and a switch for extinguishing the rear lights of an automobile without extinguishing the front lights, established that the owner or operator was in the whiskey business. Not one scintilla of evidence that an automobile so equipped is used in the whiskey business was introduced in the District Court and

it is respectfully submitted that the court could not take judicial notice of such a fact.

The Court of Appeals further paid little attention, if any, to the evidence introduced in the District Court. The Court of Appeals at pages 3 and 6 of its decision stated that the petitioners participated in the purchase of money orders which was to be used to purchase the sugar, that they traveled by cab to the American Express Company and went into the office of the American Express Company and purchased certain money orders and further, that the petitioners participated in the arrangements for the purchase of the sugar. In the District Court the Government's witness, Somers, did testify on direct examination that the petitioners accompanied him and one Victor to the American Express Office and did participate in the arrangements for the purchase of the sugar, however, on cross-examination, at page 147 of the Reporter's Transcript, the witness, Somers, admitted that he was erroneous in so testifying.

CONCLUSION

It is respectfully submitted that the petition for a writ of certiorari should be granted in order to protect the petitioners' individual rights and to correct the erroneous theory of law contained in the decisions of the Court of Appeals. This decision, it is respectfully submitted, establishes that the Government need only prove a defendant to be possessed of a quantity of sugar in order to convict under 26 U. S. C. A. 5686.

Respectfully submitted,

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Appendix to Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

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UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 8545

UNITED STATES OF AMERICA,

Appellee,

v.

CAROL LEE RAGLAND
and
ARTHUR ELWOOD WILLIAMS,

Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MARYLAND, AT BALTIMORE. R. DORSEY WATKINS, DISTRICT JUDGE.

(Argued May 29, 1962. Decided August 21, 1962.)

Before Boreman and J. Spencer Bell, Circuit Judges, and Barksdale, District Judge.

R. R. Ryder (Martin & Ryder on brief) for Appellants, and Arthur G. Murphy, Assistant United States Attorney (Joseph D. Tydings, United States Attorney, and J. Edward Davis, Assistant United States Attorney, on brief) for Appellee.

BARKSDALE, District Judge:

On January 5, 1962, pursuant to a jury's verdict of guilty, a judgment of conviction was entered against Carol

Lee Ragland, Arthur Elwood Williams and Charles Royland Liskie of conspiracy to possess sugar intended to be used in the production of distilled spirits (18 U.S.C.A. 371; 26 U.S.C.A. 5686(a)), and of the substantive offense of unlawful possession of sugar intended for use in violating the internal revenue laws of the United States (26 U.S.C.A. 5686(a); 18 U.S.C.A. 2), and prison sentences were imposed. From this judgment of conviction, Ragland and Williams have prosecuted this appeal, and the sole question before this court is whether or not the evidence was sufficient to justify their conviction. The conspiracy count originally included three others, one of whom died before the trial, and the two others, Robert Victor Somers and Charles Howard Simpson, entered pleas of guilty. The substantive count included two others, one of whom had died before the trial, and the other one, Somers, also entered a plea of guilty to that count. The appellants, Ragland and Williams, and the other defendant, Liskie, entered pleas of not guilty and were tried jointly. Neither one of the three testified or introduced any testimony in his own behalf. Somers, who had pled guilty, testified for the Government. Since the jury found the defendants guilty, the evidence must be considered in the light most favorable to the Government.

Bearing that principle in mind, the facts which the jury might properly have found, may be briefly stated as follows:

In October 1960, defendant, Robert Victor Somers (who pled guilty and testified for the Government), and defendant, Richard D. Victor III (who died before trial), met in Pittsburgh, by prearrangement, and agreed that Somers would go to work for Victor. Victor explained to Somers that he was doing business under the name of Alleghany Food Products Company and that he was engaged in the purchase and sale of sugar in Baltimore. It was agreed that Somers would come to Baltimore and look after

purchases and sales of sugar there. Victor told Somers "that Alleghany Food Products Corporation was a non-existing corporation, that it was merely a name, and a front that would be used so that we could legally purchase sugar." Victor further told Somers that he should establish an office or a residence in Baltimore, and "periodically he would contact me and let me know when men were coming in from different areas with trucks to pick up the sugar". Somers was instructed that when men came to him to purchase sugar, he was to take their money and purchase American Express Company money orders, then go to the Canton Railroad Docks, present the money and get purchase orders for the sugar and permit the men to load it. Victor did not tell Somers specially who the men were who would come to Baltimore to purchase sugar, but told him that they were going to be selling it to bootleggers.

On November 14, 1960, pursuant to this arrangement, Victor came to Baltimore, and put up with Somers at the Lord Baltimore Hotel, where they spent the night. The next morning, they went to a lunch room located on the property of the Canton Railroad Yard, and there met defendants Ragland, Williams and Liskie. After a conversation in the lunch room, in which Somers took no part, Victor, Somers, together with Ragland, Williams and Liskie, traveled by cab to the American Express Company office. On the way there was a general conversation about purchasing the sugar and Williams handed a roll of money to Victor. All of them went into the office of the American Express Company and Victor purchased two money orders in the sum of approximately $1,350.00 each. From there, they returned to the Canton Railroad Yard, and Victor and Somers went into the office and presented the money orders to an employee, who, in turn, gave them

purchase orders for the sugar. One of the purchase orders was used for the purchase of 15,000 pounds of sugar, which was promptly loaded on a truck operated by Liskie, who signed the receipt for the sugar. This truck carried Virginia license plates and was registered in the name of one Benny Goens of Hanover, Va. During the loading of the sugar on the truck, Williams and Ragland waited in, or near, a blue Ford automobile bearing Virginia license plates, which belonged to Ragland, parked on the Canton Railroad property. From time to time, Williams and Ragland were seen to observe the loading of the sugar, although they took no active part in it. As soon as the truck had been loaded, Liskie drove it away, and Williams and Ragland followed the truck in the blue Ford, keeping as closely behind it as they could "without bumping" it.

Having been previously alerted, an officer of the Maryland State Police, observed the truck operated by Liskie and the blue Ford operated by Williams, Ragland riding on the front seat with him. The officer followed the truck and Ford for approximately three-fourths of a mile, and observed that the Ford closely followed the truck, keeping only the length of a car, or a car and a half, behind it. The officer stopped the truck and Ford car near Laurel, Md., and took both vehicles with their occupants to the Maryland State Police Barracks nearby. There it was noted that the truck was carrying a load of 15,000 pounds of sugar, and that the Ford car carried unusual equipment. It was equipped with heavy-load springs, a large heavy-duty coil spring with a center shock absorber on the rear axle designed to allow the car to ride level while carrying a heavy load, the arm rests adjacent to the rear seat had been removed and a switch had been installed under the cowl which operated to turn off all rear lights of the vehicle

while leaving the front lights on. In the glove compartment of the Ford, were two publications of the Internal Revenue Service designed to warn sellers of sugar of its use in the manufacture of illicit liquor.

Upon being questioned, neither Ragland nor Williams gave any explanation of why they had come from Virginia to Baltimore to purchase sugar, gave no explanation of the unusual equipment on the Ford automobile, no explanation of their presence at the time of the loading of the sugar on the truck, no suggestion of any legitimate reason for the purchase of such a large quantity of sugar, nor why they were following the truck so closely. Ragland, Williams and Liskie were taken into custody by an agent of the Alcohol Tax Unit, and in due time their trial and conviction followed.

To justify the jury's verdict of guilty, on both the conspiracy count and the substantive offense count, it was necessary that the Government's evidence prove beyond a reasonable doubt that the defendants acted in concert pursuant to a common understanding, that one or more of the overt acts charged were committed, that the defendants possessed the 15,000 pounds of sugar, and that the sugar was intended for use in violation of the internal revenue laws of the United States. The Government relied on circumstantial evidence, which type of evidence is, of course, sufficient to support the verdict, although it does not exclude every reasonable hypothesis consistent with innocence. *Holland* v. *United States*, 348 U. S. 121, 139, 75 S. Ct. 127, 99 L. Ed. 150; *Moore* v. *United States*, 4 Cir. (1959), 271 F. 2d 564, 568. There does not seem to be any doubt that the defendants entered into an informal, varbal agreement and understanding to acquire and possess the sugar. Several of the overt acts charged were clearly proven. Nor

does there seem to us to be any serious question that the evidence proved beyond a reasonable doubt that Liskie, Ragland and Williams possessed the sugar. Liskie took actual possession of the sugar when it was loaded on the truck operated by him, and he receipted for it. Ragland and Williams participated in the arrangements for the purchase of the sugar, Williams paid for it, both Ragland and Williams were present overseeing the loading of the sugar, both undertook to convoy the sugar-laden truck out of Baltimore, traveling in an automobile owned by Ragland and operated by Williams, which circumstances seem ample to support a finding of constructive possession on the part of both Ragland and Williams. The only serious question, if indeed it be serious, is the question of the sufficiency of the proof that the sugar was intended for use in violation of the internal revenue laws. As was said in *Moore* v. *United States, supra,* p. 568:

> "It is not necessary, in appraising the sufficiency of the evidence, that this court be convinced beyond a reasonable doubt of the guilt of the defendant. Bell v. United States, 4 Cir. 1950, 185 F. 2d 202. The question is whether the evidence, construed most favorably for the prosecution, is such that a jury (or trial judge) might find the defendant guilty beyond a reasonable doubt. Bell v. United States, supra; United States v. Brown, 2 Cir. 1956, 236 F. 2d 403; Stoppelli v. United States, 9 Cir. 1950, 183 F. 2d 391."

As a matter of fact, this court is convinced from the evidence, beyond a reasonable doubt, that the defendants were guilty.

The evidence does not disclose the actual residence of

either Ragland or Williams. However, both vehicles involved bore Virginia license plates, and the truck was titled in the name of a resident of Hanover, Virginia, near Richmond. It would be strange indeed for residents of that vicinity to come all the way to Baltimore to purchase sugar, and, as was said in *United States* v. *Sawyer*, 294 F. 2d 24, 30:

> ". . . it would be a matter of common knowledge that 1,260 pounds of sugar would be much more than necessary to meet the normal requirements of one family."

Certainly, the possession of 15,000 pounds of sugar would negate any thought of family use.

Some of the evidence tended to show that Williams and Ragland intended to use this large quantity of sugar *themselves* in the illicit manufacture of liquor. The ownership by one, and the operation by the other, of the convoying Ford automobile equipped with over-load springs and the switch for extinguishing the rear lights without extinguishing the front ones, indicated that they were themselves in the illicit whiskey business. Also, the presence in the glove compartment of this car of the Government pamphlets in regard to the use of sugar in the illicit manufacture of liquor was another such circumstance. However, it is immaterial whether the sugar was intended for use in violation of the revenue laws by Ragland and Williams, or by others. In the somewhat similar case of *DeHart* v. *United States*, 4 Cir., 1956, 237 F. 2d 227, 228, this court said:

> "It would, of course, be no defense that he (the defendant) intended to sell it (the sugar) to ilicit dis-

> tillers instead of to use it himself in illicit disilling, Backun v. U. S. 4 Cir., 112 F. 2d 635, 637; and the circumstances clearly indicate that he knew that it was intended for this unlawful use. To hold otherwise would be to close our eyes to facts which are susceptible of no other reasonable explanation, and to stultify the administration of justice in the view of all right thinking men.

See also *Snead* v. *United States*, 4 Cir., 1954, 217 F. 2d 912, 914.

It is noteworthy in this case that neither defendant testified, nor offered any evidence at all, to explain their possession of this large quantity of sugar. As was said in *Moore* v. *United States, supra* (p. 568):

> "In a criminal case, the accused is protected at every stage of the trial, with a presumption of innocence, and until he is proven guilty beyond a reasonable doubt by proper and competent evidence. No inference of guilty can be drawn from the mere fact that the accused did not testify in his own behalf. These are fundamental principles which require no citation of authority."

The protection against self-incrimination embodied in the Fifth Amendment to the Constitution is a fundamental right, which has been, and should be, jealously guarded by the courts. Not only is it universally held that a defendant in a criminal case may not be required to testify, but it is equally well recognized that he need not testify, that the prosecuting attorney may not comment on his failure to testify, and if desired by the defendant, the court will charge the jury that no inference of guilt may be drawn

from his failure to testify. These are fundamental rights which must not be frittered away.

Nevertheless, protection of those fundamental rights does not mean that the failure of the defendant in a criminal case to explain highly suspicious circumstances, must be entirely disregarded by the trier of fact. As was well said in *Moore* v. *United States, supra* (p. 568):

> "If it (the evidence) be sufficient to support an inference of guilt, and the defendant fails to offer a reasonable explanation consistent with innocence, such failure may be considered by the trier of fact. Wilson v. United States (1896), 162 U. S. 613, 16 S. Ct. 895, 40 L. Ed. 1090, Jenkins v. United States, 4 Cir. (1932), 58 F. 2d 556."

In the *Wilson* case, the court said (p. 620):

> "The trial judge did not charge the jury that they should be controlled by the presumption arising from the fact of the possession of the property of one recently murdered, but that they might consider that there was a presumption and act upon it, unless it were rebutted by the evidence or the explanations of the accused."

In the *Jenkins* case, the trial court charged the jury as follows:

> "I charge you gentlemen that the defendants have a right to either testify or refrain from testifying as they deem proper and you are not to convict them because they did not testify, no inference is to be drawn

from the fact that they did not testify. I charge you, however, that the rule in this Court is that, if the case, as made out for the Government, is of such a nature as to warrant an inference of guilt, unless there is some contradiction by witnesses, the rule does not prevent the jury from considering the lack of contradiction on the part of witnesses from the defense; but under this rule you cannot take it for granted that the defendants are guilty because they did not testify."

On appeal, this court said:

"This was a proper instruction, and properly and fairly stated the law applicable to the proven facts of the case. Graves v. United States, 150 U. S. 118, 14 S. Ct. 40, 37 L. Ed. 1021."

In the *Graves* case, quoting from *Commonwealth* v. *Webester,* 5 Cush., 295, 316, the court said:

" 'But when pretty stringent proof of circumstances is produced tending to support the charge, and it is apparent that the accused is so situated that he can offer evidence of all the facts and circumstances as they existed, and show if such was the truth, that the suspicious circumstances can be accounted for consistently with his innocence, and he fails to offer such proof, the natural conclusion is that the proof, if produced, instead of rebutting, would tend to support the charge.' The rule even in criminal cases is that if a party has it perculiarly within his power to produce witnesses whose testimony would elucidate the transaction, the fact that he does not do it creates the

> presumption that the testimony, if produced, would be unfavorable. I Starkie on Evidence, 54; People v. Hovey, 92 N. Y. 554, 559; Mercer v. State, 17 Tex. App. 452, 467; Gordon v. People, 33 N. Y. 501, 508."

See also *Crawley* v. *United States*, 4th Cir. (1959), 268 F. 2d 808, 811.

It would seem that only Ragland and Williams, and possibly Liskie, knew for what use the suspect sugar was intended, and if the intended use was legitimate, it was peculiarly within their power to prove that fact, either by their own testimony or that of others. Faced with the testimony of the Government, we are of the opinion that a situation was presented where the defendants remained silent at their peril. *Holland* v. *United States, supra*, p. 139.

It is our conclusion that the Government's evidence was sufficient in itself to support the jury's verdict. But since the jury also had the right to consider, and doubtless did, that the defendants made no explanation whatever of their acquisition and possession of this large quantity of sugar, there seems to be no doubt that the jury's verdict was amply supported. It follows that the judgment of the District Court is

Affirmed.

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QUESTIONS PRESENTED

1. Whether the evidence supports petitioners' conviction for illegal possession of sugar with intent to violate the revenue laws.

2. Whether the court of appeals treated petitioners' failure to explain the suspicious circumstances surrounding their possession of a large quantity of sugar as affirmative proof justifying an inference that the use for which they intended the sugar was unlawful.

STATEMENT

Petitioners were convicted in the United States District Court for Maryland of conspiracy to possess sugar intended to be used in the production of distilled spirits (18 U.S.C. 371; 26 U.S.C. 5686(a)) and of the substantive offense of unlawful possession of sugar intended for use in violating the Internal Revenue laws (26 U.S.C. 5686(a); 18 U.S.C. 2). Each was sentenced to concurrent terms of imprisonment for one year (R. 23). The court of appeals affirmed the convictions (R. 18).

The evidence may be summarized as follows: Defendant Somers (who pleaded guilty and testified for the government) and defendant Victor (who died before trial) met by prearrangement in Pittsburgh in October 1960 and agreed that Somers would go to work for Victor. Victor explained that he was engaged in purchasing and selling sugar, using the name Allegheny Food Products Company as a front because of the difficulty of obtaining sugar without some kind of business through which it could be disposed of legally. It was arranged that Somers would

set up an office in Baltimore and take charge of purchases and sales of sugar there; that Victor would periodically advise Somers when men from various areas would arrive to pick up sugar; that Somers, after receiving money from these men, would use it to purchase American Express money orders; and that Somers would present the money at the Canton Railroad docks, obtain purchase orders for the sugar, and permit the men to load it. Although Victor did not tell Somers the identity of the men who would pick up the sugar in Baltimore, he did say that they would be selling to bootleggers (App. 36–39).

In November 1960, pursuant to this arrangement, Victor come to Baltimore and stayed with Somers at the Lord Baltimore Hotel. The next morning, at a restaurant, they met petitioners and also a man named Liskie, and Somers was introduced to them as the person with whom they should communicate in the future to purchase sugar (App. 40–41, 43, 46). After a conversation, Victor, Somers, petitioner Williams, and one of the other two men traveled together by cab to the office of the American Express Company. On the way, there was a general conversation about picking up sugar, and petitioner Williams handed a roll of money to Victor (App. 41, 44–46). All of them went into the American Express office, where Victor purchased two money orders, each for approximately $1350. They then returned to the Canton Railroad Yard, where Victor and Somers went into the office, presented the money orders to an employee, and obtained purchase orders for the sugar (App. 42, 44). One of the purchase orders was used for the purchase

of 15,000 lbs. of sugar, which was promptly loaded on a truck operated by Liskie (App. 33–34), who signed the receipt for the sugar. The truck carried Virginia license plates (App. 30–31). While the truck was being loaded, petitioners waited in or near a blue Ford automobile bearing Virginia license plates (App. 30–31), which was later found to be registered in the name of petitioner Ragland (App. 53). From time to time, petitioners were seen to have observed the loading of the sugar, although they took no active part in it. As soon as the truck had been loaded, Liskie drove it away, and petitioners followed in the blue Ford, keeping as close behind the truck as they could without bumping it (App. 31, 35).

Having been previously alerted, an officer of the Maryland State Police followed the truck and the Ford for about three-fourths of a mile, observing that the Ford, operated by Williams with Ragland beside him in the front seat, trailed the truck, operated by Liskie, by only the length of a car or a car and a half. The officer stopped both vehicles near Laurel, Maryland, and took them and their occupants to the Maryland State Police barracks nearby (App. 50–52). The Ford was found to be equipped with heavy-load springs, consisting of a large heavy-duty coil spring with a center shock absorber on the rear axle designed to enable the car to ride level while carrying a heavy load. The rear arr .est had been removed, allowing more room for the rear compartments. Hidden under the curve of the cowl was a switch which would cut off all rear lights and license identification and still leave the front lights operating (App. 54–55). In the

glove compartment were pamphlets distributed by the Alcohol and Tobacco Tax Units in Richmond, Virginia, warning sellers of sugar of its use in the illicit liquor traffic (App. 55–56). Liskie admitted driving the truck and petitioner Ragland admitted ownership of the Ford. None of them made any other statements (App. 54, 56–57).

ARGUMENT

1. Petitioners' challenge to the sufficiency of the evidence presents no issue warranting review by this Court. From all the circumstances shown—the amount of sugar involved, the fact that petitioners were together with the driver of the truck, that petitioner Williams paid for the sugar, that both petitioners observed the truck being loaded and followed it closely thereafter, the unusual equipment in petitioner Ragland's car, the statement of Victor to Somers that the sugar would be sold to bootleggers—the jury had the right to infer that petitioners possessed the sugar with intent that it be used in violation of the internal revenue laws. See *United States* v. *Skinner*, 272 F. 2d 607 (C.A. 2) certiorari denied, 362 U.S. 902; *De Hart* v. *United States*, 237 F. 2d 227 (C.A. 4).

2. In discussing the evidence, the court of appeals noted at several points that petitioners had made no attempt to explain the incriminating circumstances disclosed by the evidence. The court concluded its opinion by declaring (App. to Pet., 11):

> It is our conclusion that the Government's evidence was sufficient in itself to support the jury's verdict. But since the jury also had the right to consider, and doubtless did, that the defendants made no explanation whatever of their

> acquisition and possession of this large quantity of sugar, there seems to be no doubt that the jury's verdict was amply supported.

On the basis of these references to their silence, petitioners ascribe to the court of appeals a holding that once the government had established the element of possession, defendants' failure to prove an intended lawful use was alone sufficient to justify an inference that the intended use was unlawful. This alleged holding, they suggest, deprives them of a constitutional right, presumably (although this is not spelled out in the petition) their privilege against self-incrimination. In fact, however, the court of appeals neither stated nor implied that the lack of explanation could itself be taken as affirmative evidence of guilt or used to supply an unproved element of the offense (*i.e.*, the intended unlawful use of the sugar). On the contrary, the court expressly concluded that the government's affirmative evidence—both as to possession and as to intended unlawful use—was sufficient to support the jury's verdict. The purport of its further remarks, quoted above, was simply that when the government's evidence is sufficient to establish a prima facie case of guilt, a defendant who remains silent assumes the risk that the jury will in fact draw the guilty inference warranted by that evidence. Cf. *Holland* v. *United States*, 348 U.S. 121, 138–139. Moreover, the court's comments ~~with respect~~ were not addressed to petitioners' failure personally to take the stand, but rather to the failure of the defense to offer any explanation of the incriminating circumstances surrounding petitioners' possession

of the sugar, "either by their own testimony or that of others" (App. to Pet. 11).

In any event, the remarks of the court of appeals with which petitioners take issue were wholly unnecessary to its decision. The jury, acting upon instructions which made no reference whatever to the petitioners' silence, found petitioners guilty. That verdict, as we have shown, and as the court of appeals explicitly held, was amply supported by affirmative evidence.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition for a writ of certiorari should be denied.

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NOVEMBER 1962.

U.S. GOVERNMENT PRINTING OFFICE: 1962